

MAR - 8 1993

Before the
 FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 92-316
)	
Rivertown COMMUNICATIONS CO. INC.)	File No. BPH-911008ME
)	
SAMPLE BROADCASTING COMPANY, L.P.)	File No. BPH-911010MA
)	
For Construction Permit)	
for a new FM Station on)	
Channel 282C3 in Eldon, Iowa)	

To: Administrative Law Judge
 John M. Frysiak

OPPOSITION TO MOTION TO ENLARGE ISSUES

Sample Broadcasting Company, L.P. ("Sample"), by its attorney, respectfully opposes the Motion to Enlarge Issues against its above-captioned application, filed by Rivertown Communications Company, Inc. ("Rivertown") on February 24, 1993. In support thereof, the following is shown.

As Rivertown notes, this issue was pleaded before the Mass Media Bureau which dismissed Rivertown's petition to deny with leave to refile before the presiding ALJ. Hence, both parties have presented all the facts at their command and have argued the relevant Commission law. Rivertown has essentially copied its earlier petition to deny verbatim, including some information from its reply to opposition. It has added no new information. Sample takes this opportunity to respond to the full range of Rivertown's arguments.

Sample opposed acceptance of this late-filed Motion previously on the basis that good cause does not obtain for the late-filing. See Sample's Opposition to Motion to Accept

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Late-Filed Pleading, filed March 2, 1993. Even were its Motion accepted, Rivertown has a heightened burden of persuasion as "it did not file the petition in timely fashion and has not shown that there was good cause for the delay..." Saltaire Communications, Inc., FCC 93-107, released March 5, 1993. Under any scenario, Rivertown's Motion is wholly without merit. It must be denied.

Rivertown seeks issues relating to whether Sample's application was filed to delay the grant of Rivertown's application and whether Sample's station will be controlled by Sample's limited partner, Bruce Linder, or members of his family. To support its allegations, Rivertown refers first to a change in the ownership of "O"-Town Communications after grant of its construction permit for station KKSI(FM) Eddyville, Iowa. "O"-Town Communications is a company separate from Sample and in which Carmela Sample, Sample's sole general partner, has no ownership connection.¹ Rivertown also provides the alleged statements of Mark McVey, as reported by others. Rivertown's allegations are completely speculative, are without substance, and do not rise to the showing necessary to sustain addition of an issue, i.e. a prima facie case.

As a threshold matter, Rivertown must submit "specific allegations of fact sufficient to show ... that a grant of the application would be prima facie inconsistent with [the public

¹ Ms. Sample is employed by "O"-Town Communications. She has pledged to divest this employment in the event Sample's application is granted.

interest, convenience and necessity]." 47 U.S.C. Section 309 (d) (1); Astroline Communications Co. Ltd. Partnership v. FCC, 857 F. 2d 1556 (D.C. Cir 1988). Allegations must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. Section 309 (d)(1) In Ramon Rodriguez and Associates, Inc., 7 FCC Rcd 2633, paragraph 8, (1992) the Commission held that affidavits may be rejected when they are based on hearsay.

Rivertown's petition is supported by the affidavit of Rivertown principle David Brown and, in small measure, the affidavit of William Collins. The affidavits provided by Rivertown are not based on the personal knowledge of the affiant. They are mere hearsay. They do not report statements of a Sample principle, which might be an exception to the hearsay rule as an admission against interest, but rather they describe alleged statements of Mark McVey, who is not a principal of Sample. Mr. McVey has had minimal involvement, in ways totally irrelevant hereto, with Sample. Rivertown has not shown that Mr. McVey has any knowledge of the relationship between Sample's principals or of their plans. In fact, Mr. Brown acknowledges that Mr. McVey was merely speculating, and was not familiar with the details concerning the arrangement between Sample's principals, Carmela Sample and Bruce Linder. (See Brown's April 14, 1992, affidavit, paragraphs 3 and 4, attached to Rivertown's Motion) Brown concedes further that he is simply making assumptions. (See Brown's May 6, 1992,

affidavit, paragraph 3, attached to Rivertown's Motion) Rivertown offers no documents or other evidence in support of its allegations. These infirmities demonstrate that Rivertown's petition is reduced to unproven speculations which do not meet the requisite prima facie showing. Rivertown's affidavits fail to supply the requisite proof required to enlarge issues and should be rejected. Ramon Rodriguez, supra.

Rivertown further speculates that Sample filed its application to delay Commission action on Rivertown's application; that there are undisclosed parties in interest in Sample's application; that Bruce Linder was involved in the planning or development of Sample's application; that Sample is planning to duplicate the programming of station KKSI(FM) Eddyville, Iowa; and, that Sample misrepresented and concealed facts material to its application. These claims are also without merit and lack factual support.

Rivertown attached to its Motion to Enlarge Issues the statements which Sample provided with its Opposition to Rivertown's Petition before the Bureau. These statements refute each of Rivertown's allegations and show clearly and unequivocally that Sample is a legitimate applicant and that its representations to the Commission have been completely truthful.

Mark McVey's statement, which was submitted with Sample's opposition to the Bureau, confirms David Brown's concession

that Mr. McVey has no information from Carmela Sample or Bruce Linder about the business structure of Sample, and that he is unaware of any decisions made for Sample's application or proposed new station. Mr. McVey states further that he has little or no memory of mentioning to Brown a possible local marketing agreement between Sample and station KKSI. From his recollection of the overall context of the various conversation, McVey believes that if he made them at all, he was simply speculating and speaking in the "hypothetical". McVey affirms that any statement he may have made were not based on statements of Sample's principals, or on other facts known to him.

In their statements attached to Sample's opposition at the Bureau level, Ms. Sample and Mr. Linder specifically deny the allegations of Rivertown. Ms. Sample states that she never discussed any programming or other final plans for the new station with Mr. McVey. Mr. Linder declares that statements attributed to Mr. McVey by Rivertown do not describe the true situation. Mr. Linder has made no statements regarding the programming for the new station; he would refer such questions to Mr. Sample should they be asked of him. He emphasizes that he is completely passive in this venture. Ms. Sample avows that there are absolutely no plans or intentions of tying Sample's proposed station with KKSI in any manner, and Mr. Linder affirms that he has no knowledge of any such plans or intentions.

As to the allegation that Ms. Sample will not manage and control the new Eldon station, Rivertown has failed to show anything but an unfounded, off-hand, and speculative comment from Mr. McVey.² McVey admits freely that he has never discussed the business structure or the proposed operation of Sample's station with Ms. Sample or Mr. Linder, nor has he reviewed any documents which describe such arrangements. He affirms that he has no knowledge of the business relationship between Carmela Sample and Bruce Linder, or of any plans for operating the Eldon station. Anything Mr. McVey may have said in these areas was without any basis in fact; accordingly, Rivertown's allegations against Sample are completely without foundation.

With respect to Rivertown's claim that Sample filed its application for the sole purpose of delaying action on the Rivertown's application, Rivertown presents no proof. As indicated by Ms. Sample, Sample filed its construction permit application in order to acquire a broadcast station, and for no other reason. All agreements regarding the applicant have been reported in Sample's application. Ms. Sample views the Sample application as an opportunity to manage and own an interest in a radio station, something she has considered for a number of years. Sample is a serious and legitimate applicant. There are no illicit or surreptitious motives for

² This matter is within the scope of the standard comparative issue. No issue need be added to delve into the bona fides of Sample's integration proposal.

filing and prosecuting its application.

Ms. Sample affirms that, as the general partner, she is the sole active principal of Sample. She prepared and filed the application on behalf of Sample and will be in sole overall control of the new station. Mr. Linder has not taken any part in the preparation of the Sample application apart from agreeing to provide the necessary financing. Ms. Sample states that she has every confidence Mr. Linder will honor his commitment to be a passive investor who will not interfere with her control or management of the application or the new station.

Mr. Linder states that he is completely comfortable with Ms. Sample's ability to manage the partnership including prosecuting the application and operating the station. He will abide by the terms of the partnership agreement, which require him to be entirely passive. Mr. Linder states that his interest in "O"-Town Communications, Inc., licensee of station KKSI, is separate and distinct from his interest in Sample. In "O"-Town, he is a voting shareholder, officer and director, with a voice in the management and operation of the station. In contrast, he fully understands and accepts that he is a passive investor in the Eldon venture with no voice in station management or operation.

Rivertown seeks to relate changes in the ownership of station KKSI to what may happen to Sample's station at Eldon. Rivertown's initial claim that the ownership changes at KKSI

indicate that the KKSI ownership is somehow improper has no basis. It does not stand for Rivertown's conclusion that Eldon station will be under Bruce Linder's (or his family's) control.³ Rivertown fails, however, to show that the ownership of KKSI has violated any Commission rule or policy. The KKSI construction permit was not issued as the result of a comparative hearing; no member of the Linder family was a principal in the original KKSI application. Bruce Linder became a minority stockholder of KKSI well after the station commenced operation, and the station's ownership has been candidly reported to the Commission in a timely and proper fashion. Rivertown has failed to draw anything other than a speculative nexus between the two companies.

There is no evidence that "O"-Town Communications, or its officers or directors, will have any connection whatsoever with the management and operation of Sample's Eldon station. Rivertown fails to make any showing to support its request that "O"-Town Communications is a real-party-in-interest to the Sample application or that it should be made a party to the Eldon hearing. Should "O"-Town Communications desire to become a party to this proceeding, it will presumably do so on its own motion at the appropriate time.

³ Contrary to Rivertown's intimations, Bruce Linder does not hold all of his broadcast interests jointly with other family members. As shown by the Commission's records, he is a 49% general partner of Rogers Broadcasting Company, permittee of station KXAC(FM) St. James, Minnesota. No other Linder family member has any interest in KXAC.

Clearly, Rivertown's Motion to Enlarge Issues is completely meritless. It relies on unfounded inference and speculation, and fails to meet the requisite prima facie showing needed for any of its requested issues. Rivertown's supporting affidavits are improper hearsay and do not demonstrate the facts it alleges. Rivertown has failed to show that Sample filed its application for any improper purpose; that anyone other than Carmela Sample has controlled or is in a position to control Sample's application or the proposed station; that Bruce Linder has had any involvement in the planning or development of the Sample application; that there is any basis for a programming duplication issue; or that Sample misrepresented anything in its application.

Accordingly, Rivertown's Petition to Enlarge Issues must be denied.

Respectfully submitted,

SAMPLE BROADCASTING CO., L.P.

By 

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Its Attorney

March 8, 1993

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CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of March, 1993, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

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